IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2187 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MANOJ PAVANBHAI JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2187 of 2002

MR BM GUPTA for Petitioner No. 1-2

Mr A J Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/04/2002

ORAL JUDGEMENT

Rule. Mr A J Desai, learned APP waives service of notice of rule for respondent State of Gujarat. By consent of the learned Advocates for the parties, this

application is being heard and disposed of finally.

2. This is an application! challenging the order of the learned Judicial Magistrate First Class at Talaja in connection with Alang Police Station C.R. No.47/2002. The facts are that a FIR was registered against the present petitioner for offence punishable under section 323 read with section 114 of IPC as well as for offence punishable under section 135 of the Bombay Police Act. The petitioner was arrested and he was presented before the learned Magistrate Talaja on 4.4.2002. The petitioner submitted an application for enlargement on bail which was granted and the petitioner was enlarged on bail on the same day. Thereafter on the next date, i.e. 5.4.2002, the Police Sub-Inspector of the said police station submitted an application before the learned Magistrate stating that considering the papers the injured had sustained grievous hurt and, therefore, offence punishable under section 326 of IPC be added. After hearing the learned Advocates for the parties, the learned Magistrate allowed the said report and directed that the offence under section 326 of IPC be added. The learned Magistrate further directed that non-bailable warrant be issued against the petitioner. This is the impugned order which has been brought in challenge in this application. During the course of hearing, it is noticed that the learned Advocate appearing for the petitioner before the trial court did not have sufficient time and, therefore, he could not prepare the matter properly for presenting before the Court concerned. Moreover, it is also the case of the present applicant that no offence under section 326 of IPC has been made out even on the bare reading of the papers on hand. In above view of the matter and considering the weapon used for causing injuries on hand and the weapon used for causing injury on the head, it would be appropriate if the learned Magistrate is directed to hear the applicant as well as the State on the aforesaid point of adding offence under section 326 of IPC. After hearing them, appropriate order shall be passed by the learned Magistrate in accordance with law. At the same time, the order passed by him for issue on non-bailable warrant will remain in abeyance and it shall not be executed till the Magistrate decides the aforesaid issue before him.

In above view of the matter, this application is allowed partly. Rule is made absolute to the aforesaid extent. The applicant agrees to appear before the learned Magistrate on 26.4.2002. D.S. permitted.

19.4.2002 [D P Buch, J.]

msp